

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

<b>IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>  <b>THIS DOCUMENT RELATES TO ALL KLINE &amp; SPECTER, P.C. WAVE 8 CASES</b>	<b>Master File No. 2:12-MD-02327 MDL 2327</b>  <b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>
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**KLINE & SPECTER PLAINTIFFS' MEMORANDUM IN RESPONSE TO  
DEFENDANTS' MOTION FOR ORDER REGARDING DISPOSITION OF NON-  
REVISION GYNECARE TVT PRODUCTS CASES**

Plaintiffs, herein, represented by Kline & Specter, P.C. (hereinafter "K&S Plaintiffs"), hereby respectfully submit the following Memorandum in Response to Defendants' Motion for Order Regarding Disposition of Non-Revision Gynecare TVT Products Cases. K&S Plaintiffs do not oppose the concept and general procedure as set forth in Defendants' Motion for Order Regarding Disposition of Non-Revision Gynecare TVT Products Cases but, for the reasons set forth below, respectfully request the Court make several modifications to Defendants' proposed Order and remove the improperly included K&S Plaintiffs from this procedure and allow their cases to proceed in Wave 8.

On March 2, 2018, Defendants filed a Motion requesting that the Court enter an Order which sets forth a specific procedure for Non-Revision Gynecare TVT Products Cases. *See* Doc. No. 5313. On March 5, 2018, the Court entered a Stay of Scheduling Deadlines for the cases included in Exhibit "A" to Defendants' proposed Order while the Court considers briefs filed in response and reply to Defendants' Motion. *See* Doc. No. 5315.

The proposed Order attached to Defendants' Motion sets forth a definition of "revision surgery" which K&S Plaintiffs object to as overly restrictive and unfairly prejudicial to the plaintiffs. Accordingly, K&S Plaintiffs propose the following definition of a revision surgery:

A "Revision Surgery" means surgery as defined in this paragraph which is for the revision or removal in whole or in part of an implanted Ethicon Gynecare TVT Product(s), or revision or removal of scar tissue, repair of fistula(s), or other surgeries (including surgical treatment for pain) related to or resulting from the implantation of an Ethicon Gynecare TVT Product(s), specifically related to the mesh. The term "Revision Surgery" will apply to surgeries utilizing either general, regional MAC, or local anesthesia undertaken for the purpose of dealing with medical problems related to the mesh. Such surgery must be performed by a duly licensed physician by and upon the recommendation of a physician.

K&S Plaintiffs have incorporated this definition into a proposed Order which is attached hereto as Exhibit "A." *See* Exhibit "A" at pp. 3. The proposed Order attached to Defendants' Motion also does not include a deadline for Defendants' to serve Defense Fact Sheets. Accordingly, Plaintiffs have included a Defense Fact Sheet deadline in the discovery schedule in Plaintiffs' proposed Order. *See* Exhibit "A" at pp. 9.

Finally, K&S Plaintiffs have identified several cases amongst the cases identified in Exhibit "A" to Defendants' proposed Order in which the plaintiff has undergone a qualifying revision surgery. *See* Case List at Exhibit "B." Accordingly, these cases would be improperly included in this procedure, and K&S Plaintiffs respectfully request that the cases identified in Exhibit "B" to this memorandum be removed from this procedure and allow their cases to proceed in Wave 8.

WHEREFORE, K&S Plaintiffs respectfully request that the Court enter K&S Plaintiffs' proposed Order, lift the stay of scheduling deadlines for cases identified in Exhibit "B," and permit the cases identified in Exhibit "B" to proceed in Wave 8.

Respectfully submitted,

**KLINE & SPECTER, PC**

Dated: March 15, 2018

BY:

A handwritten signature in black ink, appearing to read 'LB', is written over a horizontal line.

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